

SECOND REGULAR SESSION

SENATE BILL NO. 620

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Pre-filed December 22, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2759.011

AN ACT

To amend chapter 8, RSMo, by adding thereto seven new sections relating to the procurement of services for state construction projects.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 8, RSMo, is amended by adding thereto seven new sections, to be known as sections 8.875, 8.878, 8.881, 8.884, 8.887, 8.890 and 8.893, to read as follows:

8.875. As used in sections 8.875 to 8.893, the following terms shall mean:

(1) "Division", the state office of administration, division of design and construction;

(2) "Director", the director of the division of design and construction;

(3) "Design-build", a project for which the design and construction services are furnished under one contract;

(4) "Design-builder", any individual, partnership, joint venture, corporation or other legal entity that furnishes the architectural or engineering services and construction services, whether itself or through subcontracts;

(5) "Design-build contract", a contract between the division and a design-builder, to furnish the architecture or engineering and related design services required for a given public construction project, and to furnish the labor, materials and other construction services for the same public project;

(6) "Design criteria package", performance-oriented specifications for the public construction project sufficient to permit a design-builder to prepare a response to the division's request for proposals for a design-build project;

(7) "Design criteria consultant", a person, corporation, partnership or other legal entity duly registered and authorized to practice architecture or professional engineering in this state under chapter 327, RSMo, and who is employed by contract

to the division to provide professional design and administrative services in connection with the preparation of the design criteria package;

(8) "Proposal", shall be an offer to enter into a design-build contract;

(9) "Request for proposals", the document by which the division solicits proposals for a design-build contract.

8.878. The following criteria may be used in determining whether a design-build contract is an appropriate method of procurement for the division:

(1) Time constraints for delivery of the project; and

(2) The suitability of the project for a design-build process.

8.881. The division may adopt regulations pursuant to chapter 536, RSMo, solely for the award of design-build contracts.

8.884. 1. The division shall determine the scope and level of detail required to permit qualified persons to submit proposals in accordance with the request for proposals given the nature of the public project and the level of design to be provided.

2. A consultant may be employed or retained by the division to prepare the design criteria, perform periodic site visits, prepare progress reports, review and approve progress and final pay applications of the design-builder, review shop drawings and submittals, decide disputes, interpret the construction documents, perform inspections upon substantial and final completion, assist in warranty inspections and to provide any other professional service where the division deems it in the public interest to have an independent design professional assisting with the project administration.

8.887. 1. Notice of requests for proposals shall be advertised in accordance with section 8.250. The division shall publish a request for proposal with a description of the project, the rationale for the decision to use the design-build method of procurement, the procedures for submittal and the selection criteria to be used.

2. The division shall pre-qualify potential design-builders for design-build projects by requesting the submission of qualification information. Under no circumstances shall price or fee be a part of the pre-qualification criteria.

3. Request for proposals shall be prepared for each design-build contract containing at a minimum the following elements:

(1) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards;

(2) The proposed terms and conditions for the design-build contract;

(3) The design criteria package;

(4) A description of the drawings, specifications or other information to be submitted with the proposal, with guidance as to the form and level of completeness of

the drawings, specifications or other information that will be acceptable;

(5) A schedule for planned commencement and completion of the design-build contract;

(6) Budget limits for the design-build contract;

(7) Affirmative action and minority or women business enterprise requirements for the design-build contract, if any;

(8) Requirements for performance bonds, payment bonds and insurance; and

(9) Any other information that the division in its discretion chooses to supply, including without limitation, surveys, soils reports, drawings of existing structures, environmental studies, photographs or references to public records.

8.890. 1. Design-builders who have been previously qualified shall submit their proposals to the division in two parts, a technical proposal and a cost proposal, according to the requirements of the request for proposals. The division shall open, review and evaluate the technical proposals prior to opening of the cost proposals, and shall recommend selection of a design-builder based on the combined totals as stated in this section.

2. The qualifications of the design-builder and its subcontractors or consultants and any requested drawings or technical information shall be submitted separate from the cost proposal and clearly marked on the outside "Technical Proposal". Each design-builder's qualifications shall be ranked in accordance with the criteria set forth in section 8.887.

3. The cost proposal of the design-builder, including the cost of all design services and construction work required to complete the project, shall be submitted separate from the technical proposal in an envelope clearly marked "Cost Proposal". Cost proposals shall be evaluated and ranked in accordance with the request for proposals.

4. As an inducement to qualified design professionals, the division shall pay a reasonable fee to each pre-qualified design-builder whose proposal is responsive but not accepted. Upon payment of the fee to any unsuccessful design-build proposer, the state shall acquire ownership to the design submitted by the proposer, and the proposer shall have no further rights thereto or liability for its use in any manner. If the design-build proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the fee.

5. The division shall have the right to reject any and all proposals. If all proposals are rejected, the division may solicit new proposals using the same or different design criteria, budget constraints or qualifications.

8.893. Any person or corporation that enters into a design-build contract for public or private construction does not violate the requirements of chapter 327, RSMo,

so long as the architectural, engineering or land surveying services to be performed under the contract are performed by:

(1) Persons who are duly licensed in this state and who are employees of the design-build contractor; or

(2) Persons who are duly licensed in this state and who are under contract to the design-build contractor; or

(3) Corporations that hold current certificates of authority from the board for the appropriate profession which are under contract to the design-build contractor.

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